K

1951. **File No.** O, Merged States / 51 Pt. III

Legal Dept A **BRANCH**

Subject:— Opinions regarding Merged States

(For previous pps pl. see Parts I & II)

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Office of the R.L.A.

Section 194(Kha) of the Baroda Village Service Rules, 1905 whereunder action is proposed to be taken in the present case falls under Chapter XVII of those Rules and as pointed out by the R.L.A. in his last opinion No.15481 dated 28-9-1951 the rules in that Chapter cannot be considered as in force in the Baroda area. Consequently, no action can be taken against the Matadar in the present case under section 194(kha) of the Baroda Village Service Rules.

It has been held by the R.L.A. that village servants who are appointed by Government and paid out of Government revenues are crown servants (Vide R.L.A's opinions Nos. 8796, dated 7-10-1940 and 2882, dated 2-4-1942). Under section 240(3) of the Government of India Act, (Now Art. 311(2) of the Constitution) and Rule 5(a) of the Bombay Civil Services, Conduct, Discipline and Appeal, Rules, it is competent to Government to dismiss a Government servant who is convicted on a criminal charge without even giving him an opportunity of showing cause against the action proposed to be taken with regard to him. These provisions will be applicable to a village servant who is also a Government servant and it would be competent to Government to dismiss him from service on his conviction by a Court of Law.

Sd/- J.R.Dhurandhar

o.c. 24/10

Remembrancer of Legal Affairs.

U.R. to R.D. No. 16995, dated the 25th October, 1951.

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OFFICE OF THE R.L.A.

It appears that the Ruler of the Sachin State executed an agreement on 24th March 1948 agreeing to transfer the Sachin State to the Indian Union for Administration and on 26th March 1948 he issued a firman granting and dedicating the entire revenues of the village Lajpore in favour of wakf. He executed also a wakf deed appointing trustees for the administration of the wakf. It appears that the revenues of the village amount to Rs. 17,827-9-9, whereas the average annual expenditure of the institution for which the trust has been created by him amounts to Rs.2.162-1-8. Considering the disparity between the revenues of the village and the expenditure of the institution and the then impending merger of the Sachin State, the R.L.A. is requested to advise whether it is possible to abrogate the wakf.

Clause (7) of the collateral letter issued to the Ruler of Sachin State provides:

> "No order passed or action taken by you before the date of making over the administration to the Dominion Government will be questioned unless the order was passed or action taken after the 1st April 1948, and is considered by the Government of India to be palpably unjust or unreasonable. The decision of the Government of India in this respect will be final."

No doubt the firman issued by the Ruler of Sachin State in this case was on 26th March 1948, i.e., before 1st April 1948, and ordinarily it would be saved by clause (7) of the collateral letter. But, as observed by the R.L.A. in his opinion dated 6th June 1951, the collateral letter being a document of a political nature, its interpretation cannot be restricted to its literal terms. If the wakf were created bona fide only for the purpose of maintaining the institution it would not have been possible to challenge it. But in the present case as stated above, the annual average expenditure of the institution amounts to Rs. 2,162/-, whereas the revenues of the village Lajpore, which has been dedicated to the wakf, amounts to Rs. 17,827. Apparently, therefore, the intention of creating the wakf of such a great property could not have been bona fide for the purpose of maintaining

a religious institution. Mainfestly the intention was to deprive the future sucessor of the State of much income of the State and divert it for other purposes. The dedication was, therefore, in anticipation of the merger of the State and consequently it would be open to the Bombay Government to refuse to recognise the whole or part of this dedication to wakf. As suggested by the Chief Secretary, an annual grant of Rs.5,000 would be more than sufficient to defray the expenses of maintaining the institution for which the village of Lajpore has been dedicated. Consequently, there appears no legal objection to repudiate the dedication of the village to wakf, subject to the payment of Rs. 5,000 annually for the maintenance of the institution.

Sd/- J.R.Dhurandhar
2/11

o.c.

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 17327, dated the 2nd November, '51.

Mjr/26/9

Office of the R.L.A.

Private Property of the Maharana of Jambughoda use of .

In his opinion dated 17.2.1950 the Additional Secretary, Legal Department, opined that in regard to the property held by the Ruler qua Ruler, it cannot be held that he has absolute right which will be inconsistent with custom orpractice followed in regard to the enjoyment of such property; and applying that principle to the property from which the Ruler of Idar and his predecessor used to obtain supply of fuel for household purpose it must be regarded as an apanage to his position as Ruler and he wouldhave to maintain it for that purpose. On the basis of that opinion a reference was made to the Central Government and the Maharaja of Idar conceded that he had no intention of alienating the Ada part of the forest of ~~Baigadh~~ Raigadh. It follows, therefore, that the legal position as stated by the Additional Secretary in the aforesaid opinion was accepted by the Maharaja of Idar. In the present case it appears that the land in the forest area to the north of the village of Malbar in Jambughoda was prior to 1947 a part of the State forest area and it was by Tharao No. 566 dated 30th October 1947 that the Maharana of Jambughoda directed that this areashould be set aside as his private property for the purpose of avoiding difficulties of obtaining the necessary timber when required for repairing the residential Darbargadh Palace and other buildings attached to it as well as for constructing new buildings, and wood for fuel, etc. and grass for horses, bullocks and other cattle for grazing. After the merger of the State certain property was recognised as private property of the Maharana of Jambughoda and in the inventory of his private property this property, i.e., the land in the forest

area to the north of the village of Malbar in Jambughoda measuring 598 acres and 32 gunthas, has been treated as the Maharana's private property for the purpose of drawing wood for building purposes and fuel and grass for stables and palace cattle. It is, therefore, apparent that the forest land declared as private property in the Tharao of 1947 and recognised as private property in the inventory of the private property of the Maharana would be available to the Maharana only for the purpose of drawing wood for building purposes and fuel and grass for stable and palace cattle. It would, therefore, follow that this forest land which has been so recognised as the private property of the Maharana would be regarded as an apanage to his position as Ruler as stated by the Additional Secretary in his opinion of 1950. Consequently, it would not be competent for the Maharana to sell the forest produce such as trees in this land to a contractor as it would be inconsistent with the purpose for which the forest has been continued as the private property of the Ruler. The Maharana can use the forest only for the purposes for which it has been recognised as private property in the inventory of the private properties of the Maharana, namely, for drawing wood for building purposes and fuel and grass, etc., and any other use thereof would not be permissible. The view taken by Chief Secretary is correct.

Sd/- J.R.Dhurandhar
o.c. 17/10

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 16515, dated the 18th October 1951.

Mjr/26/9

OFFICE OF THE R.L.A.

It would appear from the perusal of the Baroda Village Service Rules that they do not correspond in all respects to the provisions of the Bombay Hereditary Offices Act, 1874, and the Matadars Act, 1887. The provisions regarding the duties and powers of the village servants would be relatable to the provisions of the Bombay Land Revenue Code, 1879 (see section 16 of the Code) and therefore thos rules in so far as they provide for such duties and powers stood repealed on 30th July 1949 when the Baroda State (Application of Laws) Order, 1949 came into force in Baroda. The Baroda Village Service Rules also provide for the conditions of service of the village servants and the mode of payment of their salaries Those rulesalso stood repealed on the date on which Baroda merged in the Province of Bombay, On the merger of the Baroda into the Province of Bombay the rules that were applicable to the village servants in respect of their conditions of service were those made under section 241 of the Government of India Act, 1935. On the commencement of Part III of the Government of India Act, 1935 the conditions of services applicable to Crown servants were those provided for in section 241 of the Government of India Act, 1935 and therefore in the course of the adaptation of statutes applicable to British India all provisions in those statutes providing for conditions of service of Crown servants were deleted by the Government of India (Adaptation of Indian Laws) Order, 1937 and provisions under the Bombay Land Revenue Code relating to conditions of service of Crown servants were no longer applicable to them. With effect from the commencement of Part III of the Government of India Act, 1935 the Crown servants were governed by rules made under section 241 of the said Act and the same rules became applicable to the Baroda Village servants on the merger of Baroda in the province of Bombay.

2. From Chapters III,IV and V of the Rules, it will appear that the appointments to the office of a Patel are based on the system of Matadari but stipendary patels can be appointed

is specified circumstance. As regards inferior village servants, some of such servants hold hereditary watan lands on condition of rendering service. The rules as they stand are a combination of various provisions which are relatable to -

(1) The Bombay Hereditary Offices Act, 1874,

(2) The Matadars Act, 1887-this Act extends only to districts of Ahmedabad ,Kaira, Broach and Surat,

(3) The Bombay Village Police Act, 1867 -e-g. see rule 148,

(4) The Bombay Land Revenue Code, 1879.

The first two of the said Acts have not been extendéd to Baroda. As stated above, the provisions which are relatable to the Bombay Land Revenue Code and the Bombay Village Police Act and the provisions regarding conditions of service cannot be considered as in force in the area. The other provisions of the rules will survive and shall be deemed to be in force.

It appears from the rules that the rovisions of -

(1) Chapter VII re: Salary of Talati,

(2) Chapter X re: Malvara and contigency grants,

(3) Chapter XIII re: duties of village servants;

(4) Chapter XIV re: Powers of aiPatel,servants;

(5) Chapter XVI re: leave rules,

(6 Chapter XVII re: punishments to village servants,

(7) Chapter XIX re: rules 215 to 220, 223 and 225,

purely relate to village administration and as such are in no way connected with the hereditory vatans of village servant and they need not be considered as in force in the Baroda area The view taken by the R.D. that all the rules are in force is not quite correct. So far as the delegation of powers under the rules is concerned the view taken by the R.D. is correct.

Sd/- J.R.Dhurandhar
24/9

o.c.

Remembrancer of Legal Affairs,

U.R. to R.D. No. 15481, dated the 28th September 1951.

Mjr/26/9

Office of the R.L.A.

Indu Law
Jurisdiction of Civil Judges in divorce matters in Baroda -

Bombay Merged States (Laws) Act, 1950

Section 5
&
Bombay Hindu Divorce Act, 1947.

In paragraph 5 of his letter dated 1st June 1951, the District Judge of Baroda has stated:

"It will thus appear that there is a conflict with regard to the application of the Baroda Hindu Act and Bombay Act No. XXII of 1947. It would be a doubtful point which Act would apply and in what Court a particular divorce suit should be filled. Even with regard to section 9 of the Application of Laws Order quoted above in extenso by me some points remain in doubt. The Hindu Act is continued and applied to all persons having or acquiring domicile of the Baroda State. Notwithstanding that the territories of the said State may have formed part of a province in the Dominion of India. It can be easily understood that some persons may have already applied for domicile in the Baroda State before merger; but after merger the Baroda State does not remain a State and forms part of the State of Bombay. It is difficult to understand how a person may still acquire domicile of the Baroda State. It would be desirable if Legislature were to resolve these doubts by some enactment having retrospective effect otherwise they will have to be construed judicially in the form in which they stand at present."

The High Court has requested Government to take necessary action in view of the difficulties pointed out by the District Judge, Baroda, in the matter of administering the law relating to divorce in his district..The R.L.A. is requested to advise.

It is true that after the merger of the Baroda State in the Bombay State both the Baroda Hindu Act and the Bombay Hindu Divorce Act, 1947, are in force in the merged Baroda State are. But section 5 of the Bombay Merged States (Laws) Act, 1950, provides:

"Notwithstanding anything contained in the foregoing provisions of the enactments specified in the first column of the Fifth Schedule shall continue in force in the mergef States specified in the second column of that Schedule as if they are enacted by the State Legislature until they are altered, repealed or amended by the said Legislature or any other competent authority."

The Baroda Hindu Act of 1937 is one of the enactments specified in the Fifth Schedule and

consequently that Act would be in force notwithstanding the application of any other laws to that area; that is to say, the Bombay Hindu Divorce Act, 1947. The Bombay Hindu Divorce Act has general application, that is to say, it applies to all Hindus, while the Baroda Hindu Act, 1937, applies to all persons domiciled in the Baroda State who are Hindus by birth or by conversion to Hinduism or to whom any part of this Act is made applicable by this Act to the extent to which it is so applicable. It is, therefore, apparent that the Baroda Hindu Act will be considered as a special enactment applivable to the Hindus as stated above. There would,, therefore, be no conflict between the two Acts as opined by the District Judge of Baroda. He has relied on section 9 of the Application of the Laws Order and has raised the doubt as to who could be considered as acquiring domicile of Baroda State when that State itself has ceased to exist. The view of the District Judge in this connection is not correct. The Application of Laws Order lapsed on the merger of the Baroda State in the Bombay State. Consequently, the application of the Baroda Hindu Act to those acquiring domicile of Baroda State after the Application of Laws Order would not arise at all. The Baroda Hindu Act would apply only to those persons who were the demiciles of the Baroda State before its merger in the Bombay State and will have no application to may persons who will acquire domicile in that area after the merger thereof. The District Judge has stated that some persons may have already applied for domicile of Baroda State before merger. A person cannot acquire a domicile by making any application. Domicile depends on the animus of the ~~of the~~ persons to reside permanently in the State. Consequently, those persons who had decided to permanently reside in the Baroda State before the merger thereof in the Bombay State would be governed as stated above by the Baroda Hindu Act.

In paragraph 3 of his letter the District Judge has stated:

> "Chapter 21 of the Hindu Act deals with divorce. Parishishta 7 provides that the Court having jurisdiction in a Court of the Civil Judge of a Mahal Unles any one of the parties is a minor in which case the District Court would have jurisdiction. Thus all divorce suits in which one of the parties is a minor would have to be heard by the District Court. Under the Bombay Act divorce suits were originally triable by the District Judge but now they can be transferred to the Civil Judge (S.D.) Even when one of the parties was minor the suit coming within the provision of Bombay Act No. XXII of 1947 could be transferred but the one Governed by the Hindu Nibundh of Baroda could not be so transferred."

If the difficulty pointed out by the District Judge causes any inconvenience in the administration, there would be no objection to amending Parishishta 7 of the Baroda Hindu Act giving jurisdiction to the Senior Civil Judge in all divorce suits.

The Baroda Hindu Act, 1937, has been specially retained, for it is a law which, if repealed, and another Act is applied, the rights of the parties would be affected. Moreover when the merger took place the Hindu Code Bill was before the Central Legislature which would have made the law uniform not only in the Baroda State, but throughout the country. It was, therefore considered that it was not desirable to disturb the Hindu Law including the law relating to Hindu divorces prevalent in Baroda at the time of the merger. This was also the suggestion of certain experienced lawyers in Baroda. It will however be desirable to await the fate of the Hindu Code which is before the Parliament. In any case the law of the domicile of the parties at the time of marriage is relevant to its validity because the law of domicile regulates the parties' capacity to marry and the question whether a marriage is void for want of capacity of either party will bedetermined by the laws of his or her ante-nuptial domicile (see Dicey's Conflict of Laws, 6th End. pp. 226 and 259). Consequently, it would be necessary that those persons who were married under the Baroda Hindu Act should continue to be governed by the provisions thereof.

Sd/ J.R.Dhurandhar
o.c. 30/11/

Remembrancerof Legal Affairs.

U.R. to H.D. No. 19220, dated the 30th November, 1951.

Mjr/26/9

Office of the R.L.A.

The R.L.A. is requested to advise whether the files marked 4, 5 and 52 (of the Huzur Record Office, Janjira) should be handed over to the Nawab as calimed by him; or they should retained by Government.

File No. 4 contains confidential papers pertaining to Sidi Dawood's case. Siddi Dawood was charged with treason; add the Inam Lands granted to him were forfeited. By a proclamation issued by the Dewan of the State the subjects of the State were prohibited from having any dealings or communication with him. The file contains several reports made by the Dewan of theState to His Highness. It is true that the file also contains several personal letters written by Shri Baxi Miya, father of Siddi Dawood, to the then Nawab. But the file as a whole appears to pertain to a State matter and cannot be said to be relatable to the private affairs of the Ruler.

File No. 5 contains old correspondence (1881-1883) mainly letters addressed by Siddi Mahomed Khan Baxi to the Assistant Political Agent, Janjira, requesting for payment of certain dues from the State treasury. Siddi Mahomed Khan Baxi was the step.brother of the late Nawab whose calim to the Gadi of the State was rejected by the British Government (vide in this connection G.R. Political Department No. 5109, dt 17-10 1883 at end of the File.) The file appears to contain correspondence relating to matters of the State.

The last file marked 52 also contains correspondence between Sidi Mahomed Khan Baxi and the Political Agent and th Dewan in regard to his calims in the Inam village and to receive various payments from the State treasury in accordance with custom. Though the correspondence suggests calims reiterated against the then Nawab it cannot be said that it pertains to private matters between the Nawab and Sidi Baxi Miya.

In conclusion it appears that none of the three files marked 4,5 and 52 contains correspondence which can be said to be of a personal nature and which would entitle the Ruler

to calim their possession. All the three files contain official correspondence. The files need not, therefore, be handed over to the Nawab.

If however the Nawab wants the copies of any of the papers in the above files, there will be no objection to allow him to have such copies made at his own cost.

o.c. Sd/- J.R.D-hurandhar
4/12

Remembrancer of Legal Affairs.

U.R. to P. & S.D., No 19525, dated the 5th December 1951

Mjr/26/9

Office of the R.L.A.

Transfer of Cases from Sirohi State

The simple expedient suggested by the Home Department wouldnot be feasible. Both section 527 of the Criminal Procedure Code and section 25 of the Civil Procedure Code relate to transfer of cases from one State to another. In the present case the transfer is to be effected from the courts of the Sirohi State which have become defunct to the courts in this State. The Sirohi State has become a part and parcel of this State by virtue of the provisions of States' Merger (Bombay) Order, 1950 and the provisions of section 527 of Criminal Procedure Code or section 25 of the Civil Procedure Code will not be available for effecting a transfer.

Sd/- J.R.Dhurandhar

o.c. 7/12

Remembrancerof Legal Affairs,

U.R. to H.D. No. 19714, dated the 7th December 1951.

Mjr/26/9

Office of the R.L.A.

The Collector of Baroda in his letter at page 1 ante States that before mergerthe cattle pound was used by the public for impounding stray cattle in the village and the income derived therefrom was credited to the Bhaderwa State account and not to the private account of the Thakore. The cattle pound has not moreover been included in the list of private properties of the Thakore prepared in pursuance of the agreement of merger. These facts are sufficient to show that the Cattle pound cannot be said to be the private property of the Thakore. The view expressed at 'A' in the Collector's letter appears to be correct. However as the question pertains to the private property of the Thakore the Revenue Department may also consult the P. & S.D. in the matter.

Sd/- J.R. Dhurandhar

O.C.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20320 dated the 20th December 1951

Mjr/26/9

Office of the R.L.A.

Attention isinvited to Government of India, Ministry of States, letter No.D.5347-Eco/50, dated 20/22-1-1951, which refers inter alia to the connession of leases of lands at nominal rents, as in this case, granted by Rulers before merger. Para 2 of the letter specifies the legal position that after cession the ihhabitants cannot calim any rights except those recognized by the new soverign. Para 3 of the letter contains the instructions of the Government of India based on the rule of international law that a change of soverignty ought not to affect private property and that the agreement should not be repudiated unless they are considered to be mala fide, extravagent or against public interest. In this case the transaction took place as far back as in the year 1905, and there is no reason to doubt the bona fides of it. Such concessions were granted by Indian States for the purpose of the development of nascent industries. The reasonableness or otherwise of the concessions is not to be considered in regard to the present circumstances but with respect to the time when they were granted. The question about the continuance or of the reasonableness of the concessions is not a question of law but is one for the administrative department to consider. If the administrative department comes to the conclusion that it would be inequitable and unreasonable and not in public interest to continue the concessions, the administrative department should consider whether the concession may be continued for a period of ten years as suggested by the Government. of India.

Sd/- J.R.Dhurandhar
21/12

O.C. Remembrancer of Legal Affairs,

U.R. to R.D. No. 20389, dated the 21st December, 1951.

Mjr/26/9

It appears that the camp site (i.e., the buildings and the lands) at Rukdi was given to the Shahu Shikshak Vidyalaya under Kolhapure Government Resolution, Education Department No. 156 dated 9th March 1943. By that Government Resolution it was further resolved that the question whether the property was of the Khasgi or of the Durbar should be referred to the higher authorities and the expenditure of Rs. 1,200 proposed for the developement of the lands should in no way be allowed to influence the ultimate decision of the question. Thereafter it appears that the Kolhapur Government spent also Rs. 12,000 over alterations and special repairs to the buildings and Rs. 20,000 on turning the grassy waste lands into a cultivable farm. However, the question whether this property should be considered as te Khasgi or the Durbar property was decided some time before 1948 and the property was treated as the Khasgi property and was gifted on 14th June 1948 by His Highness Chhatrapati Shahji Raje, Maharaja of Kolhapur, to the Rayat Shikshah Sanstha, Satara. The order passed by the Comptroller of the Household, Kolhapur, on 14th June 1948 specifies the conditions subject to which this property was gifted to the Rayat Shikshan Sanstha, Satara. One of the conditions is that this property should be used for the education-al and industrial institutions started by Bhaurao Patil on behalf of the Rayat Shikshan Sanstha and for no other purpose. Another condition is that if none of the institutions, such as educational, training or commercial, established on the site continues to exist, the whole property that is to say, the land and the buildings, should revert to the Khasgi Department.

The Shahu Shikshak Vidyalaya, which was being run by the Kolhapur Government in the past is now being run by the Bombay Government as a Government primary training institution. It is at present located in the same site and building of Rukdi where it previously was. The Rayat Shikshan Sanstha considers that any further continuance of the Shahu Shikshak Vidayalaya in the same site at Rukdi would involve the breach of the

conditions subject to which the property has been gifted by His Highness Chhatrapati Shahji Raje, Maharaja of Kolhapur to the Sanstha and desires that the Shahu Shikshak vidyalaya should be shifted from that site.

It is true, as stated above, that according to the conditions subject to which that giftrof the property has been made to the Rayat Shikshan Sanstha by High Highness Chhatrapati Shahji Raje, Maharaja of Kolhapur, the property would revert to the Khasgi Department of the Maharaja in the event of non-existence of any of the educational, commercial or industrial institutions of the Rayat Shikshak Sanstha Vidayalaya, the site. It appears that the Shahu Shikshak Vidayalaya, which was being run by the Kolhapur Government in the past, has been located in that site since before the property was gifted to the Rayat Shikshan Sanstha by the Maharaja. At present some part of the property is in possession of the Rayat Shikshan Sanstha. It has started one English A.V. School there and proposes to start a training college for the fulfilment of the local needs. It is apparent from these facts that there has been no breach of the conditions subject to which the property has been gifted to the Sanstha by the Maharaja. The question of reversion of the property or its forfeiture does not, therefore, arise.

Government appears to have accepted the position that the property was the private property of the Maharaja of Kolhapur who gifted it to the Rayat Shikshan Sanstha and the property rightfully belongs to the Sanstha. In other words, it means that the gift made by the Maharaja to the Sanstha on the basis that it was his own private property is considered valid. If so, even if a breach of any of the conditionsof the gift, has occured, the property would revert to the Maharaja of Kolhapur as his Khasgi property and not to Government.

Sd- J.R.Dhurandhar
9/11
O.C. Remembrancer of Legal Affairs.

U.R. To E.D. No. 18461, dated the 19th November 1951.

Mjr/27/9

Office of the R.L.A.

The point referred to the R.L.A. for advice is as under:-

"Whether in terms of paragraph 5 of the States Merger (Governor's Provinces) Order, 1949, the Residency Building at Mount Abu is the property of the Central Government or whether the Government of Bombay can calim it as vesting in them and whether any certificate to that effect is necessary under paragraph 5(2) of the said Order".

Under the States' Merger (Bombay) order, 1950, some part of the former Sirohi State has been merged in the State of Bombay with effect from 25-1-50. The part so merged includes Mount Abu. By article 5 of the said Order, the provisions of articles 6 to 10 of the States' Merger (Governor's Provinces) Order, 1949, have been made applicable to the part of the Sirohi State so merged in the State of Bombay.

Article 5 of the States' Merger (Governor's Provinces) Order, 1949, provides as under:-

"5(1) All property, wherever situated, which, immediately before the appointed day is vested in the Dominion Government for purposes of the governance of a merged State shall, as from that day, vest in the Government of the absorbing Province, unless the purposes for which the property is held immediately before the day are Central purposes.

(2) A certificate of the Domirion Government signed by a Secretary to that Government be conclusive as to whether the purposes for which any property is held immediately before the appointed day are Central purposes".

According to the said provisions only that property in respect of which the following conditions are satisfied would vest in the state of Bombay, namely:-

(1).....

P.T.O.

(1) That prior to 25-1-50 the property vested in the Central Government for the purpose of the governnance of the part of the Sirohi State which was merged in the State of Bombay.

(2) That the purpose for which the property was so vested was not a Central purpose.

From the information supplied by the Collector of Banaskantha with regard to the Residency Building at Mount Abu in his letter at p. 31 ante, it appears that the building was constructed by the Central Government for the residence of the Agent to the Governor-General in Rajputana on the land acquired at Mount Abu from the Sirohi Darbar in the middle of the 19th Century and that it is still in possession of the Central Government. The building is at present occupied by the Regional Commissioner for Rajasthan Union. From the above information it appears that the Residency Building was not utilised for the purpose of the governance of the Sirohi State only but for the purpose of the governance of all the States included in the Rajputana Agency. Moreover the construction was made on the land acquired by the Central Government. The building is at present utilised by the Regional Commissioner for Rajasthan Union which ispresumably a Central purpose..It is true that Mount Abu now forms part of the State of Bombay and as such it is excluded from the Rajasthan Union but only on that account it cannot be argued that the Regional Commissioner should shift to a place within the Rajasthan Union. The building was formerly utilised by the Government of India as a residence for the Agent to the Governor General, Rajputana.

Taking into consideration the information supplied by the Collector of Banaskantha, there does not appear to be any scope to take a stand that according to the provisions of article 5(1) of the Statea' Merger (Governor's Provinces) Order, 1949, the Residency Building vests in the Government of Bombay. But it should be pointed out to the Government of India that Mount Abu being no longer in Rajasthan, the use

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of the building for the residence of the Regional Commissioner for Rajasthan is not justified and that the Government of India should agree to allow it to be used for the stay of the high officials of the State who may be visiting Mount Abu.

Sd/- J.R.Dhurandhar

o.c. 21/6

Remembrancer of Legal Affairs.

Mjr/20/9